

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

SEP 16 2019

Clerk, U.S. District Court
District Of Montana
Missoula

GARY LEE ENZLER,

CV 19-39-H-DLC-JTJ

Petitioner,

vs.

ORDER

LYNN GUYER; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

On July 31, 2019 United States Magistrate Judge John T. Johnston entered his Order and Findings and Recommendation recommending that Montana State Prisoner Gary Lee Enzler's ("Enzler") petition for habeas corpus under 28 U.S.C. § 2254 be dismissed as improperly filed. (Doc. 9.) Enzler timely objects and so is entitled to de novo review of those findings to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

DISCUSSION

Judge Johnston recommended dismissing Enzler's petition as improperly filed after determining that Enzler's claim should be brought under 42 U.S.C. § 1983 as Enzler claims he is not receiving adequate mental health care. (Doc. 9 at 4.) In way of objection, Enzler files two documents. In the first he details his concerns with the Findings and Recommendations by hand written annotation. (Doc. 9.) His second supplemental filing is a one-page handwritten document. (Doc. 11.) The Court has diligently reviewed both documents and done its best to discern what it can from each.

While the substance of Enzler's objections are largely unintelligible as a result of his penmanship, the gist is clear. Enzler is disappointed by the recommendation and conveys strong personal feelings towards the Magistrate Judge. Nevertheless, the Court is not able to discern any factual or legal objection directed towards Judge Johnston's determination that Enzler has raised an Eighth Amendment claim which must be brought under section 1983. Therefore, reviewing for clear error and finding none,

IT IS ORDERED that Judge Johnston's Findings and Recommendation (Doc. 9) is ADOPTED in full.

1. The Petition (Doc. 1) is DISMISSED as improperly filed under 28 U.S.C. § 2254.

2. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

3. A certificate of appealability is DENIED.

DATED this 16th day of September, 2019.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court